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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of
The Use of N11 Codes and Other
Abbreviated Dialing Arrangements

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CC Docket No. 92-105

To: The Commission

PETITION FOR CLARIFICATION

The Interactive Services Association (ISA), by its attorneys, hereby petitions the Commission to clarify the nondiscrimination obligation imposed on local exchange carriers (LECs) offering information services pursuant to the Commission's *First Report and Order* in the above-captioned proceeding ("Order").^{1/} Specifically, the ISA urges the Commission to clarify that to the extent a LEC (or its affiliate) offers information services via an N11 code, the LEC is subject to the same, broad prohibition on discrimination that currently applies to Bell Operating Companies (BOCs) involved in the provision of interLATA information services.

INTRODUCTION

The ISA is the leading trade association devoted exclusively to promoting consumer interactive services worldwide. The association has approximately 350 members representing the full spectrum of industries providing telecommunications-based interactive services to consumers. The ISA has consistently supported efforts to create a level playing field for all

^{1/} *In the Matter of The Use of N11 Codes and Other Abbreviated Dialing Arrangements, First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 92-105 (rel. Feb. 19, 1997).

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competitors involved in the information services industry. For example, last year, the ISA asked the Commission to ensure that BOCs do not discriminate against unaffiliated entities in any manner which could adversely affect competition in the information services industry once BOC affiliates begin providing their own interLATA information services (e.g., audiotext, Internet, voice mail, etc.).^{2/} On December 24, 1996, the Commission adopted the broad nondiscrimination requirement that the ISA had sought.^{3/} As discussed below, the ISA believes that this same nondiscrimination requirement should apply to LECs which, directly or through an affiliate, provide information services via an N11 code.

DISCUSSION

The Commission concludes in the *Order* that "a LEC may not itself offer enhanced services using a 411 code, or any other N11 code, unless that LEC offers access to the code on a reasonable, nondiscriminatory basis to competing enhanced service providers in the local service area for which it is using the code to facilitate distribution of their enhanced services."^{4/} The ISA applauds the Commission's efforts to level the playing field in the provision of information services via N11 codes. However, the ISA is concerned that the Commission's N11

^{2/} See ISA Comments at 2 (filed August, 19, 1996) in CC Docket No. 96-149, *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*. In its filing, the ISA noted that appropriate safeguards may be needed to govern other (non-BOC) local exchange carriers which offer information services.

^{3/} *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-149 (rel. December 24, 1996) ("*Non-Accounting Safeguards Order*").

^{4/} *Order* at ¶ 48.

nondiscrimination standard might be interpreted too narrowly. For example, some might argue that a LEC would comply with its nondiscrimination obligation as long as it assigns N11 codes on a nondiscriminatory basis. In order to avoid any misunderstanding, the ISA asks the Commission to clarify that the N11 nondiscrimination standard mirrors the broad and comprehensive nondiscrimination standard adopted by the Commission in the *Non-Accounting Safeguards Order*. Specifically, the ISA seeks clarification that the *Order* prohibits LECs (including BOCs) which provide information services via N11 codes (either directly or through an affiliate) from discriminating against competitors in *any manner* that could adversely affect competition in the information services industry.

Sound public policy supports application of the same nondiscrimination requirements to N11 codes as was applied in the *Non-Accounting Safeguards Order*. In the *Non-Accounting Safeguards Order*, the Commission recognized that a BOC may have an incentive to use its control of local exchange facilities to discriminate against its affiliate's rivals.^{5/} The Commission unequivocally stated that its goal in adopting rules in that proceeding was "to ensure that BOCs do not use their control over local exchange bottlenecks to undermine competition ..." and "to protect competition ... from the BOCs' ability to use their existing market power in local exchange service to obtain an anticompetitive advantage."^{6/} Identical anticompetitive concerns arise where a LEC (or its affiliate) provide information services via an N11 code.

^{5/} See, e.g., *Non-Accounting Safeguards Order* at ¶ 194.

^{6/} *Id.* at ¶ 206.

For example, even if a LEC assigns N11 codes to competitors on a nondiscriminatory basis, it could engage in other discriminatory practices which make access to the code practically meaningless. Such discrimination could be manifested in a LEC's refund policies, billing dispute notification procedures, or a decision not to bill for a competitor's information services altogether. In response to similar concerns about potential discrimination in the provision of billing and collection services for interLATA information services, the Commission explicitly recognized in the *Non-Accounting Safeguards Order* that billing and collection services are subject to the broad prohibition on discrimination.

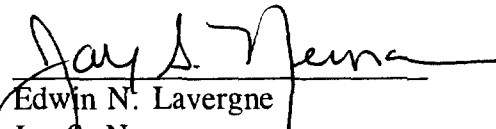
CONCLUSION

In this filing, the ISA simply requests parity in the protections afforded to businesses providing interLATA information services and those providing such services via N11 codes. If the Commission fails to clarify the N11 nondiscrimination standard as the ISA proposes, the unintended result may be that businesses providing information services via N11 codes do not have the same protections as those providing interLATA information services.

Respectfully submitted,

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